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<u>REMARKS</u>

Favorable reconsideration of the present patent application is respectfully requested in view of the foregoing amendments and the following remarks. In this Amendment claims 23, 30, 35, 38 and 41 are amended, claim 46 is added, and no claims are canceled (claims 1-22 were previously canceled). As a result, claims 23-46 are now pending in the application.

The final Office Action of October 2, 2008 objects to claim 41 as allegedly being of improper dependent form. Claims 23-32 and 35-37 are rejected under 35 U.S.C. §112, second paragraph as allegedly being indefinite. Claims 23-28 and 30-32 are rejected under 35 U.S.C. §103(a) in view of U.S. Patent 6,901,493 (Maffezzoni). Claims 29 and 38-45 are rejected under 35 U.S.C. §103(a) in view of Maffezzoni further in view of Published U.S. patent application 2002/0107877 (Whiting). Claim 33 is rejected under 35 U.S.C. §103(a) in view of so-called Applicant's Admitted Prior Art (APA) and further in view of Published U.S. Patent Application 20030229768 (Kawano). Claim 34 is rejected under 35 U.S.C. §103(a) in view of so-called APA further in view of Kawano and yet further in view of Maffezzoni. Claims 35-37 are rejected under 35 U.S.C. §103(a) in view of Kawano further in view of Maffezzoni and yet further in view of Whiting.

So-Called Applicant's Admitted Prior Art (APA)

The pending Office Action states that since the Examiner's assertion of Official Notice in the rejection of claim 2 was not traversed the "facts presented in these rejections are taken to be admitted prior art." This is not the case, for at least two reasons. Firstly, it is noted that the previous Amendment of June 6, 2008 canceled claims 1-8, 10-19 and 21 (claims 9, 20 and 22 were previously canceled), hence obviating the rejections. The Office does not require, or even want, applicants to respond to the rejection of canceled claims. In the event the Office has adopted a new policy requiring applicants to respond to the rejections of claims that are subsequently canceled, it is respectfully requested that those portions of the MPEP supporting this new policy be indicated in the next Office Action. Secondly, the present claims, newly added by the previous Amendment, do not recite all of the same features as the previously pending claims were canceled. Hence, any previous allegations of so-called admitted prior art do not apply to the

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not apply to the newly added claims. Consequently, the Office's previous allegations of so-called admitted prior art (APA) are not acquiesced by applicant.

Claim Objections

The Office Action objects to claim 41 as being of improper dependent form for failing to further limit the subject matter of a previous claim. Although it is believed this objection is not properly drawn, the claims have been amended to provide a clearer recitation of features, thus obviating the objection.

§112 Second Paragraph Rejections

The Office Action rejects claims 23 and 30, objecting to the limitation "a user area of a first storage device" in lines 5-6. The present amendments to claims 23 and 30 attend to the typographical error giving rise to this antecedent basis inconsistency. Accordingly, withdrawal of the rejection is earnestly requested.

The Office Action rejects claim 35, objecting to the term "said directory" in line 3, and the terms "a directory" and "a first storage device" in lines 5, 11 and 13. The present amendments to claim 35 attend to the typographical errors giving rise to these antecedent basis inconsistencies. Accordingly, withdrawal of the rejection is earnestly requested.

§103 Rejection in view of <u>Maffezzoni</u>

The Office Action rejects claims 23-28 and 30-32 under §103 in view of <u>Maffezzoni</u>. The Office Action rejects dependent claim 29 under §103 in view of <u>Maffezzoni</u> further in view of <u>Whiting</u>. These rejections are respectfully traversed for at least the following reasons.

Various embodiments of the invention create a backup copy of data from a hard drive including the data of a user area and the data of a protected area. The user area is readily accessible to a user. However, a protected area of a hard drive (e.g., host protected area (HPA)) is not accessible to the user's operating system, e.g., the operating system booted from the user area. Typically, in order to access the protected area the computer must be booted to the protected area. This poses a difficulty if attempts are made to back up the protected area using the operating

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the operating system booted from the user area. To avoid this difficulty, various embodiments first boot to the protected area to copy data from the protected area to the user area. Once this is done a complete data backup copy can be made by booting to the user area and copying the user area data as well as the data from the protected area which was copied to the user area. *It should be noted that the "user accessible contents" are not necessarily the same as the "contents of the protected area."* The Office Action cites the Maffezzoni patent in rejecting the claims. The Maffezzoni patent addresses a different problem and operates in a different manner. Thus, Maffezzoni does not teach or suggest the features of the claimed invention.

Maffezzoni involves a method of protecting—that is, backing up—data of a computer system. The Background of Maffezzoni discusses the problem that can occur if the portion of the hard disk that stores the operating system (OS) becomes damaged or otherwise inaccessible. To avoid this problem Maffezzoni creates a special copy of the OS and selected data to be backed up in a second partition. Then if the first partition containing the OS fails or is otherwise inaccessible the user can simply boot to the second partition to retrieve the backup copy of data by booting to the backup copy of the OS in the second partition. The operation of Maffezzoni is explained very clearly in the following passage.

> In accordance with one aspect of the present invention, a method for protecting data of a computer system having a hard drive with an operating system stored on a first partition thereof is provided. In this method, the operating system is copied from the first partition of the hard drive to a second partition of the hard drive and selected data from the hard drive is copied to a backup location. Thereafter, if a crash that prevents the computer system from booting from the operating system stored on the first partition of the hard drive occurs, then the computer system is booted from the copy of the operating system stored on the second partition of the hard drive. Next, if the selected data needs to be restored back to the hard drive, then the backup location to which the selected data was copied is accessed and the selected data is restored back to the hard drive.
> In one embodiment, the second partition of the hard drive is hidden from a user of the computer system.[1]

Maffezzoni mentions that the second partition may be "hidden" from the user. While Maffezzoni does not go into detail about what a "hidden" area is, it is possible that this could be

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[1] Maffezzoni, col. 2, lines 16-32.

construed as a protected area. Still, <u>Maffezzoni</u> does not disclose or suggest the features of the claimed invention. <u>Maffezzoni</u>'s hidden area—the second partition—is where the backup copy is *stored*, not where the backup copy is *taken from*. It should be noted that <u>Maffezzoni</u> makes this backup copy in a second (hidden) partition to avoid losing data when the first partition becomes damaged. Thus, <u>Maffezzoni</u> does not disclose or suggest "copying contents of the protected area of the first storage device to a user area of the first storage device," as recited in claim 23 and claim 30. Further, <u>Maffezzoni</u> does not disclose or suggest making a backup copy of *both* the first partition and the second (hidden) partition to another storage device. Thus, <u>Maffezzoni</u> does not disclose or suggest "saving the user area to a second storage device, the user area comprising user accessible contents and the copied contents of the protected area," as recited in claim 23 and claim 30.

The Office Action acknowledges that <u>Maffezzoni</u> fails to teach copying the content of a hidden/protected area of a disk to the user area of the disk. But then the Office reasons "that it would habe been obvious to one having ordinary skill in the art to make a backup copy of the protected area of disk to user area of disk (i.e., make two copies) to keep the system operational from the same hard drive in case of logical crash of one of the partitions."[2] This does not make sense. <u>Maffezzoni</u> is copying the first partition data into the second hidden partition to make a backup copy. Why would <u>Maffezzoni</u> copy the backup data back from the second hidden partition back into the first partition? Wouldn't that result in two copies of the same data being stored in the first partition? Further, since <u>Maffezzoni</u> makes a backup copy in the second hidden partition for use in case the first partition becomes damaged, when <u>Maffezzoni</u> retrieves the backup copy from the second hidden partition, wouldn't the first partition be damaged?

The Office Action also acknowledges that <u>Maffezzoni</u> fails to teach copying both the protected area and the user area to a second storage device.[3] This is true: <u>Maffezzoni</u> does not teach copying both the protected area and the user area to a second storage device because in <u>Maffezzoni</u>'s system the second hidden partition contains a backup copy of the first partition.

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[2] Office Action of Oct. 2, 2008, page 5.
[3] Office Action of Oct. 2, 2008, pages 5-6.

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Why would anyone want to copy *both* the data and its backup copy both to a third location on another storage device? If anything, one would backup only a single copy of the data to a third location on another storage device. But, as acknowledged in the Office Action, Maffezzoni does not teach this.

Regarding the rejection of dependent claim 29, the Office relies on the secondarily cited Whiting document to purportedly teach the features of the dependent claim. The Whiting document involves a system for backing up files on a computer system, but does not use a protected area. Thus, Whiting does not disclose or suggest "copying contents of the protected area of the first storage device to a user area of the first storage device," and "saving the user area to a second storage device, the user area comprising user accessible contents and the copied contents of the protected area," as recited in claim 23 and claim 30. As such, Whiting does not overcome the deficiencies of Maffezzoni discussed above.

Accordingly, it is respectfully submitted that Maffezzoni does not teach or suggest the features of claims 23-28 and 30-32. Moreover, Maffezzoni and Whiting, either taken singly or as a hypothetical combination, do not teach or suggest the features of claim 29. Therefore, withdrawal of the rejections is respectfully requested.

§103 Rejection in view of Maffezzoni / Whitingi

The Office Action rejects claims 29 and 38-45 under §103 in view of Maffezzoni further in view of Whiting. This rejection is respectfully traversed for at least the following reasons.

As discussed above in regard to the rejection of claims 23 and 30 the Maffezzoni patent does not teach or suggest copying data from a protected area (or hidden area) to a user area. Maffezzoni also fails to disclose copying the data *copied from the protected area* to another device. Therefore, Maffezzoni does not disclose or suggest "wherein the read utility is to copy contents of a protected area of a storage device attached to the electronic device to a directory in a user area of the storage device, and wherein the read utility is further to save a backup copy of the directory to the backup storage device," as recited in claim 38. The second cited Whiting document involves a system for backing up data but does not involve protected areas. Thus,

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Whiting does not overcome the deficiencies of Maffezzoni, and does not disclose or suggest the features of claim 38 mentioned above.

Accordingly, it is respectfully submitted that Maffezzoni and Whiting, either taken singly or as a hypothetical combination, do not teach or suggest features of the claimed invention. Therefore, withdrawal of the rejections is respectfully requested.

§103 Rejection in view of So-called APA and Kawano / Maffezzoni

Claim 33 is rejected under 35 U.S.C. §103(a) in view of so-called Applicant's Admitted Prior Art (APA) further in view of Published U.S. Patent Application 20030229768 (Kawano). Claim 34 is rejected under 35 U.S.C. §103(a) in view of so-called APA further in view of Kawano and yet further in view of Maffezzoni. These rejections are respectfully traversed.

The Office Action calls the Background of the present patent application Admitted Prior Art (APA), and contends that so-called APA teaches restoring a protected area directory from a first storage device to a user area of a second storage device. The Background does not teach this. The cited portion of the Background merely discusses backing up data—and does not teach or suggest "restoring a protected area directory," as recited in claim 33. In fact, the sentence immediately following the cited portion of the Background teaches away from the feature alleged in the Office Action to be APA. The Background states:

> To address these potential problems, careful users periodically save the contents of their storage devices to backup storage devices (e.g., other disk drives or tape drives), either directly connected to their electronic devices or indirectly connected, e.g., attached via a network. When disaster strikes, the saved contents can be restored to the electronic device of origin or a different device if desired.
> *Although this save and restore procedure works well for the user area of a storage device, which is accessible by the operating system of the electronic device, some modern storage devices contain an area called a HPA (Host Protected Area), which is not accessible by the operating system.* [4]

As can be seen from the italicized text, the Background does not teach the feature alleged in the Office Action ("restoring a protected area directory"), and in fact teaches away from that

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[4] Background of present application, page 2, lines 23-32 (emphasis added).

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feature. Further, the Background makes no mention of restoring any "directory", either from a protected area or otherwise. Therefore, the Background—characterized as APA by the Office—does not teach or suggest "restoring a protected area directory from a first storage device to a user area of a second storage device," as recited in claim 33.

The Office Action cites the <u>Kawano</u> published patent application in the rejection of claim 33. <u>Kawano</u> describes a special OS in the hidden area of a hard drive that can be used to access data in the hidden area.[5] <u>Kawano</u> seems to be concerned with copying data back and forth between the hidden area of a hard drive and the user area of the same hard drive. <u>Kawano</u> does not teach or suggest "restoring a protected area directory from a first storage device to a user area of a second storage device," as recited in claim 33. As such, <u>Kawano</u> does not overcome the deficiencies of the Office's reliance on the Background discussed above.

In regards to dependent claim 34, the Office further cites the <u>Maffezzoni</u> patent. <u>Maffezzoni</u> does include a passage mentioning that a hidden partition can be prepared on a hard drive. However, <u>Maffezzoni</u> does not teach or suggest "restoring a protected area directory from a first storage device to a user area of a second storage device," as recited in claim 33, and as such, does not overcome the deficiencies discussed above.

Accordingly, it is respectfully submitted that the so-called APA, <u>Kawano</u> and <u>Maffezzoni</u>, either taken singly or in hypothetical combination, do not teach or suggest the features of the claimed invention. Therefore, withdrawal of the rejection of claims 33-34 is earnestly requested.

§103 Rejection in view of So-called APA and <u>Kawano</u> / <u>Maffezzoni</u>/ <u>Whiting</u>

Claims 35-37 are rejected under 35 U.S.C. §103(a) in view of <u>Kawano</u> further in view of <u>Maffezzoni</u> and yet further in view of <u>Whiting</u>. This rejection is respectfully traversed.

Claim 35 recites "a first storage device configured to store first contents in a protected area, store a copy of said first contents in a user area, and store second contents in the user area outside a directory designated for said first contents." The Office Action acknowledges that

Kawano fails to teach a directory for storing the data. The Office Action then cites Whiting, contending that it would be obvious to one of ordinary skill in the art to provide a directory for backup as taught by Whiting. However, it is noted that the feature being claimed is not merely to to provide a directory for backup. The claimed feature is to "store second contents in the user area outside a directory designated for said first contents," as recited in claim 35. Kawano fails to teach a directory for storing the data. Whiting discusses a directory for backup purposes. However, neither Kawano or Whiting teach or suggest "stor[ing] second contents in the user area outside a directory designated for said first contents," as recited in claim 35. The third cited document, Maffezzoni, does not mention the use of directories, and therefore does not overcome this deficiency of Kawano and Whiting.

Accordingly, it is respectfully submitted that Kawano, Whiting and Maffezzoni, either taken singly or in hypothetical combination, do not teach or suggest the features of the claimed invention. Therefore, withdrawal of the rejection is earnestly requested.

Deposit Account Authorization / Provisional Time Extension Petition

It is believed that no extension of time is required for this filing and the accompanying Fee Transmittal attends to the required fees. However, to the extent necessary, a provisional petition for an extension of time under 37 C.F.R. §1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 50-0439 and please credit any excess fees to such deposit account.

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[5] See Kawano paragraph [0036] and Special OS 24 of Fig. 1.

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CONCLUSION

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. However, in the event there are any unresolved issues, the Examiner is kindly invited to contact applicant's representative so that such issues may be resolved as expeditiously as possible.

Respectfully submitted,

GATEWAY, INC.

By _____   Date: ___JAN 28, 2009___

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